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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,837	10/06/2003	Daniel D. Braden	BRADX 100	3723
2555	7590	12/17/2004	EXAMINER	
KREMBLAS, FOSTER, PHILLIPS & POLICK			NGUYEN, SON T	
7632 SLATE RIDGE BOULEVARD			ART UNIT	PAPER NUMBER
REYNOLDSBURG, OH 43068			3643	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/679,837	BRADEN, DANIEL D.	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 2,12,17-20,24,25 and 29-44 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-11,13-16,21-23 and 26-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/6/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: as shown in figures 1-4,11,12.

Species II: as shown in figures 5,7-12,14.

Species III: as shown in figures 6,11-13.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are generic claims.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Jason Foster on 4/28/04 a provisional election was made with traverse to prosecute the invention of species I, claims 1,3-11,13-16,21-23,26-28. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2,12,17-20,24,25,29-44 have withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1,3 & 5 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3478722 (herein 722).**

For claim 1, 722 teaches a birdhouse, comprising: a) a first tower (any one of unit refs. 20-25,33), having four sidewalls attached to a floor 20 and a ceiling 33, at least one of said sidewalls being a back of the first tower and at least another of said sidewalls being a front of the first tower (see figs. 1,4-7 layouts); b) a second tower (any one of unit refs. 20-25,33), having four sidewalls attached to a floor 20 and a ceiling 33,

at least one of said sidewalls being a back of the second tower and at least another of said sidewalls being a front of the second tower (again see figs. 1,4-7); wherein the back of the first tower is mounted to the sidewall of the second tower to form a pair of connected towers (as shown in figs. 1,4-7).

For claim 3, 722 teaches wherein the back of the first tower is mounted near the front of the second tower (see figs. 6-7 configurations).

For claim 5, 722 further teaches a) a nesting chamber (see fig. 1, two unit are mounted on top of each other, thus, are considered partitioned chambers), having one or more partitions substantially parallel to the floor and extending between the sidewalls of the first, second, third and fourth towers; and b) at least one gap (created by the not so tight connection members 70-72) between the partition and the sidewalls.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over 722 (as above). It would have been an obvious substitution of functional equivalent to substitute the ventilation holes 105 in the chambers of 722 with at least two chamfered comers in the partitions to allow air movement within the tower, since both types of hole would perform to allow ventilation in the tower.

7. **Claims 4,7-11,21-23,26-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over 722 (as above) in view of US 4702198 (herein 198).

For claim 4, in addition to the above, 722 further teaches a) a third tower, having four sidewalls attached to a floor and a ceiling, at least one of said sidewalls being a back of the third tower and at least another of said sidewalls being a front of the third tower (see figs. 1,4-7); b) a fourth tower, having four sidewalls attached to a floor and a ceiling, at least one of said sidewalls being a back of the fourth tower and at least another of said sidewalls being a front of the fourth tower; wherein the back of the third tower is mounted to the sidewall of the fourth tower forming a second pair of connected towers (see figs. 1,4-7). However, 722 is silent about at least one top mount unit removably mounting a top of the first pair of towers to a top of a second pair of towers near a central passageway between the tower pairs; and d) at least one base mount unit, having an opening defining a lower end of the central passageway, removably mounting a bottom of the first pair of towers to a bottom of the second pair of towers.

198 teaches at least one top mount unit (see fig. 12, top unit including refs. 48,11) removably mounting a top of the first pair of towers (the lower towers to that of ref. 11 in fig. 12) to a top of a second pair of towers near a central passageway 46 between the tower pairs; and d) at least one base mount unit 58, having an opening defining a lower end of the central passageway (see fig. 13 at ref. 52), removably mounting a bottom of the first pair of towers to a bottom of the second pair of towers. It would have been obvious to one having ordinary skill in the art at the time the invention

was made to employ top and base mount units as taught by 198 in the birdhouse of 722 in order to allow the birdhouse to be supported on a surface such as the ground.

For claim 7, 722 as modified by 198 (emphasis on 722) further teaches a) a nesting chamber (see fig. 1, two unit are mounted on top of each other, thus, are considered partitioned chambers), having one or more partitions substantially parallel to the floor and extending between the sidewalls of the first, second, third and fourth towers; and b) at least one gap (created by the not so tight connection members 70-72) between the partition and the sidewalls.

For claim 8, it would have been an obvious substitution of functional equivalent to substitute the ventilation holes 105 in the chambers of 722 as modified by 198 with at least two chamfered comers in the partitions to allow air movement within the tower, since both types of hole would perform to allow ventilation in the tower.

For claim 9, it would have been an obvious substitution of functional equivalent to substitute the connection features of 722 as modified by 198 with the base mount unit is connected to at least one bottom-mount bracket for connecting the first tower pair to the second tower pair, since both types of connection would perform to connect the units together to form the tower.

For claim 10, in addition to the above, 198 teaches wherein the top mount unit is mounted to the sidewalls defining the central passageway for inserting a pole 38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to the top mount unit is mounted to the sidewalls defining the central passageway for inserting a pole 38 as further taught by 198 in the birdhouse of 722 as

modified by 198 in order to allow the birdhouse to be supported on a surface such as the ground.

For claim 11, 722 as modified by 198 (emphasis on 722) teaches wherein each ceiling is a single panel on each of the first, second, third and fourth towers (see fig. 3).

For claim 21, 722 teaches a birdhouse, comprising: a) a first pair of towers, each tower having four sidewalls attached to a floor and a ceiling, at least two of said sidewalls forming backs of the respective towers and at least another two of said sidewalls forming fronts of the respective towers, wherein the back of a first tower is mounted to the sidewall of a second tower to form the first pair of towers (see figs. 1,4-7, and comments for claim 4 above); b) a second pair of towers, each tower having four sidewalls attached to a floor and a ceiling, at least two of said sidewalls forming backs of the respective towers and at least another two of said sidewalls forming fronts of the respective towers, wherein the back of a third tower is mounted to the sidewall of a fourth tower to form the second pair of towers (see figs. 1,4-7, and comments for claim 4 above). However, 722 is silent about c) at least one top mount unit removably mounting a top of the first pair of towers to a top of a second pair of towers and having an aperture defining a central passageway; and d) at least one base mount unit, having an opening defining a lower end of the central passageway, said base mount unit removably mounted to a bottom of the first pair of towers and a bottom of the second pair of towers.

198, as explained above, teaches c) at least one top mount unit removably mounting a top of the first pair of towers to a top of a second pair of towers and having

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an aperture defining a central passageway; and d) at least one base mount unit, having an opening defining a lower end of the central passageway, said base mount unit removably mounted to a bottom of the first pair of towers and a bottom of the second pair of towers (see above claim 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ top and base mount units as taught by 198 in the birdhouse of 722 in order to allow the birdhouse to be supported on a surface such as the ground.

For claim 22, 722 as modified by 198 (emphasis on 722) teaches wherein the back of the first tower is mounted near the front of the second tower (see figs. 1,4-7).

For claim 23, 722 as modified by 198 (emphasis on 722) teaches wherein the back of the third tower is mounted near the front of the fourth tower (see figs. 1,4-7).

For claim 26, 722 as modified by 198 wherein the base mount unit is connected to the first tower pair and the second tower pair to hold the tower from the ground as explained above.

For claim 27, 722 as modified by 198 (emphasis on 198) wherein a top mount unit is mounted to the sidewalls defining the central passageway (see the above claims for 198's teaching).

For claim 28, see claim 11.

8. **Claims 13-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over 722 as modified by 198 as applied to claims 1,3,4,9 above, and further in view of US 6170437 (herein 437).

For claim 13, 437 teaches a front sidewall of a birdhouse having a door having at least one hinge on one side and a fastener on an opposite side for latching the door closed (col. 4, lines 31-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a hinged door with a latch as taught by 437 in the birdhouse of 722 as modified by 198 in order to allow opening and closing to the interior of the birdhouse.

For claim 14, 722 as modified by 198 & 437 (emphasis on 722) teaches wherein the front sidewall has one or more bird sized openings 83.

For claim 15, 722 as modified by 198 & 437 (emphasis on 722) teaches at least one porch 60 attached perpendicular to the front sidewall, positioned below the opening.

For claim 16, 722 as modified by 198 & 437 (emphasis on 722) teaches wherein the front sidewall has at least one air vent opening 105 for each nesting chamber.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn